

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 LARRY BRIAN PORTEOUS, ) Case No.: 1:21-cv-00529-SAB (PC)  
12 Plaintiff, )  
13 v. ) ORDER DENYING PLAINTIFF’S MOTION  
14 R. AVILA, et al., ) FOR APPOINTMENT OF COUNSEL,  
15 Defendants. ) WITHOUT PREJUDICE  
16 ) (ECF No. 25)  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

17 Plaintiff Larry Brian Porteous is proceeding *pro se* in this civil rights action pursuant to 42  
18 U.S.C. § 1983.

19 Currently before the Court is Plaintiff’s motion for appointment of counsel, filed June 9, 2022.

20 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.  
21 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent  
22 plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern  
23 District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court  
24 may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at  
25 1525.

26 Without a reasonable method of securing and compensating counsel, the court will seek  
27 volunteer counsel only in the most serious and exceptional cases. In determining whether  
28 “exceptional circumstances exist, the district court must evaluate both the likelihood of success on the

merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

In the present case, the Court does not find the required exceptional circumstances. In support of his motion, Plaintiff alleges that counsel should be appointment because: (1) he is indigent; (2) his imprisonment limits his ability to litigate the action; (3) a trial will likely involve conflicting testimony; and (4) he has limited access to the law library. (ECF No. 25.) Even if it assumed that Plaintiff is not well versed in the law and that he has made serious allegations which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with similar cases almost daily. Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not establish exceptional circumstances that would warrant a request for voluntary assistance of counsel. While the Court recognizes that Plaintiff is at a disadvantage due to his pro se status and his incarceration, the test is not whether Plaintiff would benefit from the appointment of counsel. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most actions require development of further facts during litigation and a pro se litigant will seldom be in a position to investigate easily the facts necessary to support the case.”) The test is whether exception circumstances exist and here, they do not. Thus far, Plaintiff has been able to draft a complaint which was ordered served and has propounded discovery on Defendants. This action is proceeding on Plaintiff’s due process claim against Defendants Avila and Welch and retaliation claim against Defendant Avila, and at this early stage of the proceedings the Court cannot make a finding that Plaintiff is likely to succeed on the merits. Accordingly, Plaintiff’s motion for the appointment of counsel is denied, without prejudice.

IT IS SO ORDERED.

Dated: June 13, 2022

  
UNITED STATES MAGISTRATE JUDGE